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New Number

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ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

ROBERT W. ALVORD\*  
CARL C. DAVIS\*  
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\*ALSO ADMITTED IN MARYLAND

RECORDATION NO. 5733 Filed 1988

JUL 18 1988-2 42 PM

INTERSTATE COMMERCE COMMISSION

JUL 18 1988-2 42 PM

INTERSTATE COMMERCE COMMISSION

July 18, 1988

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are three copies each of a Limited Recourse Loan and Security Agreement dated as of July 15, 1988, a primary document, and a Supplement thereto, a secondary document.

The names and addresses of the parties to the enclosed documents are:

Lender: The CIT Group/Equipment Financing, Inc.  
1400 Renaissance Drive, Suite 400  
Park Ridge, Illinois 60068

Debtor: Banc One Equipment Finance, Inc.  
111 Monument Circle  
Indianapolis, Indiana 46277

Kindly cross reference the enclosed documents to the Memorandum of Lease dated June 21, 1988, which was duly filed and recorded on June 21, 1988 under Recordation Number 15694 and supplemented under Recordation Numbers 15694-A through 15694-D.

A description of the railroad equipment covered by the enclosed documents is set forth in Appendix A attached hereto and made a part hereof.

8-198A036  
No.  
JUL 18 1988  
Date.....  
Fee \$ 26.00  
ICC Washington, D.C.

NOTICE OF  
OPERATING UNIT  
JUL 18 2 33 PM '88  
ICC OFFICE OF  
THE SECRETARY

*C. T. Koppen*  
*C. T. Koppen*

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
July 18, 1988  
Page Two

Also enclosed is a check in the amount of \$26 payable to the order of the Interstate Commerce Commission covering the required recordation fees.

Kindly return two stamped copies each of the enclosed documents to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street, N.W., Washington, D.C. 20006.

A short summary of the enclosed documents to appear in the Commission's Index is:

Limited Recourse Loan and Security Agreement dated July 15, 1988 between The CIT Group/Equipment Financing, Inc., Lender, and Banc One Equipment Finance, Inc., Debtor, and Supplement dated July 15, 1988 thereto, covering four (4) turbo charged diesel locomotives bearing ID and Road Numbers 4002, 4004, 4006 and 4008. See Recordation Numbers 15694 through 15694-D with respect to the Memorandum of Lease dated June 21, 1988 and related documents covering the locomotives.

Very truly yours,

Charles T. Kappler

Enclosures

# APPENDIX A

Qty	Manufacturer or Seller	Description	ID or Road Numbers
Four (4)	General Electric	Model Dash 8-40B, turbo charged diesel locomotives	4002, 4004 4006 and 4008

**Interstate Commerce Commission**  
Washington, D.C. 20423

7/18/88

OFFICE OF THE SECRETARY

Charles T. Kappler  
Alvord & Alvord  
918 16th St. N.W.  
Washington, D.C. 20006

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/18/88 at 2:45pm, and assigned recordation number(s). 15693-A, 15694-B, 15694-C & 15694-D, 15733 <sup>6</sup>/<sub>6</sub> 15733--A  
Sincerely yours,

*Nanta L. McEneaney*  
Secretary

Enclosure(s)

ICC COPY  
FILED 157/33 BSR  
JUL 18 1988-2 45 PM  
INTERSTATE COMMERCE COMMISSION

LIMITED RECOURSE LOAN AND SECURITY AGREEMENT

THIS LIMITED RECOURSE LOAN AND SECURITY AGREEMENT, of this 15th day of July, 1988 is entered into by and between BANC ONE EQUIPMENT FINANCE, INC., an Indiana corporation ("Debtor"), and THE CIT GROUP/EQUIPMENT FINANCING, INC., a New York corporation ("Lender")

Preliminary Statement

A. CIS CORPORATION, a New York corporation ("CIS"), as lessor, and THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION, a New Jersey corporation ("Lessee"), as lessee, have entered into that certain Master Lease Agreement dated as of June 21, 1988 which is incorporated by reference in and made a part of that certain Equipment Lease Schedule Ref. No. 1 (CL-72) dated as of June 21, 1988 between CIS, as lessor, and Lessee, as lessee, as heretofore amended (collectively, the "Lease").

B. Pursuant to the Lease, CIS has leased to Lessee the Equipment described in the Lease.

C. Pursuant to the CIS Assignment and the CIS Bill of Sale (as such terms are defined below), CIS has sold the Equipment to Debtor and assigned to Debtor all of CIS's right, title and interest in and to the Lease (irrevocably and not for purposes of collateral).

D. Debtor has requested that Lender finance Debtor's acquisition of the Equipment from CIS.

E. Lender is willing to make the Loan herein contemplated on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Debtor and Lender hereby agree as follows:

SECTION 1. DEFINITIONS

1.1 Defined Terms. As used in this Agreement the following terms shall have the following defined meanings, unless the context otherwise requires (such terms to be equally applicable to both singular and plural forms of the terms defined):

"Agreement", "hereof", "hereto", "hereunder" and words of similar import shall mean this Limited Recourse Loan and Security Agreement, as the same may from time to time be amended, modified or supplemented.

"Business Day" shall mean a day other than a Saturday, Sunday or legal holiday under the laws of the State of New York.

"CIS" shall mean CIS Corporation, a New York corporation.

"CIS Assignment" shall mean that certain Assignment and Assumption Agreement dated as of July 15, 1988 by and between CIS, as assignor, and Debtor, as assignee, together with all exhibits, schedules, riders and other attachments thereto, whereby, among other things, CIS assigns to Debtor all of CIS's rights and remedies under the Lease.

"CIS Bill of Sale" shall mean that certain Bill of Sale dated as of July 15, 1988 by CIS, as seller, to Debtor, as buyer, together with all exhibits, schedules, riders and other attachments thereto, whereby, among other things, CIS sells the Equipment to Debtor.

"CIS's Consent" shall mean an agreement by CIS in favor of Lender pursuant to which, among other things, CIS shall consent to the assignment by Debtor to Lender of all rights, remedies and privileges of Debtor under the CIS Assignment and the CIS Bill of Sale.

"Closing Date" shall mean the date on which the Loan is made pursuant hereto.

"Code" shall mean the Uniform Commercial Code as from time to time in effect in any applicable jurisdiction.

"Collateral" shall have the meaning set forth in Section 6.1 hereof.

"Commitment" shall mean the obligation of Lender to make the Loan in the aggregate principal amount specified in Section 2.1 of this Agreement.

"Consent of Lessee" shall have the meaning set forth in Section 3.1, clause (h) hereof.

"Cost" shall mean, with respect to any item or Unit of Equipment, the lower of the manufacturer's or supplier's invoiced purchase price therefor (after giving effect to any discount or other reduction) or the purchase price actually paid by Debtor to CIS for the Equipment, which amount shall be set forth in the Supplement pertaining to such item or Unit of Equipment.

"Debtor" shall mean Banc One Equipment Finance, Inc., an Indiana corporation.

"Default" shall mean any event which with notice, lapse of time, and/or any further condition, event or act would constitute an Event of Default.

"Equipment" shall mean any and all items of equipment, inventory or other items of property which are listed on Supplements hereto, together with all accessories, parts, repairs, replacements, substitutions, attachments, modifications, renewals, additions, improvements, upgrades and accessions of, to or upon such items of equipment, inventory or other property, now or at any time hereafter acquired.

"Event of Default" as defined in Section 7 of the Agreement.

"Event of Loss" as defined in the Lease as amended by the Consent of Lessee.

"Guarantor" shall mean Delaware Otsego Corporation, a New York corporation.

"Guarantor's Consent" shall mean an agreement by Guarantor in favor of Lender pursuant to which, among other things, Guarantor shall consent to the assignment to Lender of all rights, remedies and privileges of CIS and/or Debtor under the Guaranty.

"Guaranty" shall mean that certain Guaranty dated as of June 21, 1988, as amended by that certain First Amendment to Guaranty dated as of June 30, 1988, each of which is by Guarantor in favor of CIS.

"Impositions" shall mean any and all fees, taxes (whether sales, use, excise, gross receipts, personal property or other taxes), imposts, duties, withholdings, assessments and other governmental charges of whatever kind or character, however designated (together with any penalties, fines or interest thereon), which are at any time levied or imposed against Lender, Debtor, Lessee, CIS, this Agreement, the Notes, the Lease, the Equipment or any part thereof by any federal, state or local government or taxing authority in the United States or by any foreign government or any subdivision or taxing authority thereof upon, with respect to, as a result of or measured by (i) the Equipment (or any part thereof), the Lease, or the interest of any party therein; or (ii) the purchase, ownership, delivery, leasing, possession, maintenance, use, operation, return, sale or other disposition of the Equipment or any part thereof; or (iii) the rentals, receipts or earnings payable under the Lease or otherwise arising from the Equipment or any part thereof; excluding, however taxes based on or measured by the net income of Lender.

"Installment Payment Date" shall mean, with respect to the Note, each date on which a regular installment of principal and interest is due on such Note.

"Late Charge Rate" shall mean a rate per annum equal to two percent (2%) over the Reference Rate, but not to exceed the highest rate permitted by applicable law.

"Lease" shall mean that certain Master Lease Agreement dated as of June 21, 1988 which is incorporated by reference in and made a part of that certain Equipment Lease Schedule Ref. No. 1 (CL-72) dated as of June 21, 1988, as the same have been amended by that certain First Amendment to Master Lease Agreement dated as of June 30, 1988 and that certain First Amendment to Equipment Lease Schedule No. 1 dated as of June 30, 1988, together with all exhibits, schedules, riders and other attachments to any of the foregoing, all of which are by and between CIS, as lessor, and Lessee, as lessee.

"Lender" shall mean The CIT Group/Equipment Financing, Inc., a New York corporation.

"Lessee" shall mean The New York, Susquehanna and Western Railway Corporation, a New Jersey corporation.

"Liens" shall mean liens, mortgages, security interests, pledges, title retentions, charges, financing statements or other encumbrances of any kind whatsoever.

"Loan" shall mean the loan made by Lender pursuant to this Agreement.

"Note" shall mean the promissory note of Debtor evidencing the Loan, as described in Section 2.2 of this Agreement.

"Obligations" shall mean (i) the aggregate unpaid principal amount of, and accrued interest on, the Note; (ii) any and all other obligations and liabilities of Debtor, now existing or hereafter incurred, under, arising out of or in connection with this Agreement or the Note or the CIS Assignment; (iii) any and all obligations and liabilities of Lessee under the Lease or the Consent of Lessee; (iv) any and all obligations and liabilities of Guarantor under the Guaranty or Guarantor's Consent; and (v) any and all obligations of CIS under the CIS Assignment, the CIS Bill of Sale or CIS's Consent.

"Prepaid Principal Amount" as defined in Section 2.3(a) of this Agreement.

"Proceeds" shall have the meaning assigned to it in the Code, and in any event, shall include, but not be limited to, (i) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to Debtor from time to time with respect to any of the Equipment, the Lease, the Consent of Lessee, the Guaranty, Guarantor's Consent, the CIS Assignment, the CIS Bill of Sale and CIS's Consent; (ii) any and all payments (in any form whatsoever) made or due and payable to Debtor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Equipment, the Lease, the Consent of Lessee, the Guaranty, Guarantor's Consent, the CIS Assignment, the CIS Bill of Sale and CIS's Consent by any governmental body, authority, bureau or agency or any other



person (whether or not acting under color of governmental authority); (iii) any and all payments for damages arising out of or for breach or default under or in connection with the Lease, the Consent of Lessee, the Guaranty, Guarantor's Consent, the CIS Assignment, the CIS Bill of Sale and CIS's Consent; and (iv) any and all other rents or profits or other amounts from time to time paid or payable in connection with any of the Equipment, the Lease, the Consent of Lessee, the Guaranty, Guarantor's Consent, the CIS Assignment, the CIS Bill of Sale and CIS's Consent.

"Reference Rate" shall mean the rate publicly announced from time to time as the reference rate of Manufacturers Hanover Trust Company ("MHT"). The reference rate is not intended to be the lowest rate of interest changed by MHT in connection with extension of credit to debtors. The Reference Rate shall be determined at the close of business on the 15th day of each calendar month (if the 15th day is not a Business Day then on the first preceding Business Day) and shall become effective as of the first day of the calendar month succeeding such determination and shall continue in effect to, and including, the last day of said calendar month.

"Rental Installments" shall mean any and all regular installments of rent due and payable by Lessee under the Lease.

"Supplement" shall mean the Supplement executed and delivered by Debtor in substantially the form of Exhibit A attached hereto.

"Unit of Equipment" shall mean those items of Equipment described on the Supplement and financed with the Loan.

1.2 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles.

## SECTION 2. AMOUNT AND TERMS OF LOAN.

2.1 The Loan. Subject to the terms and conditions of this Agreement, Lender agrees to make one loan to Debtor with respect to the Equipment and the Lease, in an aggregate principal amount not to exceed \$3,080,370.60. The Loan shall be for a term of one hundred nine (109) months. In no event shall the Loan exceed 63.5% of the Cost of the Equipment. The Loan hereunder shall be in an amount of at least \$3,000,000.00. Lender shall have no obligation to make any Loan hereunder after July 15, 1988. Debtor shall give Lender at least five Business Days' prior written notice of the proposed Loan, specifying the amount and date thereof.

### 2.2 The Note.

The Loan shall be evidenced by a promissory note of Debtor substantially in the form of Exhibit B hereto, with appropriate insertions therein as to amounts and dates. The Note shall (i) be

dated the date on which the Loan evidenced thereby is made; (ii) be in an amount equal to the lesser of \$3,080,370.60 and 63.5% of the Cost of the Equipment; (iii) be for the term specified in such Note, which term will not exceed the remaining term of the Lease; (iv) be payable in the number of consecutive monthly installments, on the dates and in the amounts set forth in such Note; and (v) bear interest from the date thereof on the unpaid principal amount thereof at the rate of eleven and thirty-five one hundredths percent (11.35%) per annum until such amount shall become due and payable (whether at the stated maturity thereof, by acceleration or otherwise). Whenever any amount shall become due and payable under the Note, interest thereon shall thereafter be payable at the Late Charge Rate, until such amount shall be paid in full.

### 2.3 Casualty Loss.

(a) Prepayment Due to Casualty Loss. In the event that any item of Equipment shall suffer an Event of Loss and Lessee shall have elected to pay the Stipulated Loss Value, as set forth in Section 13(a) of the Lease, Debtor shall make a prepayment on the Note identified with such item of Equipment, within 30 days after the occurrence of such Event of Loss, in an amount determined (i) by multiplying (A) the unpaid principal amount of such Note by (B) a fraction the numerator of which shall be the Cost of the item of Equipment which suffered the Event of Loss and the denominator of which shall be the Cost of all the items of Equipment covered by the Supplement (the amount obtained by multiplying (i)(A) and (i)(B) hereof shall be herein referred to as the "Prepaid Principal Amount"), (ii) by adding interest accrued, with respect to the Prepaid Principal Amount, to the date of such prepayment, and (iii) by adding late charges, if any, and any other sums which may be due with respect to the Equipment which was the subject of the Event of Loss. Upon payment in full of any such prepayment amount, and so long as no Default or Event of Default has occurred and is continuing, the item of Equipment subject to such Event of Loss shall be released from the security interest of this Agreement.

(b) Prepayments Limited. Except as provided in paragraph (a) above of this Section 2.3 and in Section 13.4 hereof, the Note may not be prepaid in whole or in part.

(c) Replacement of Equipment. In the event Lessee shall have elected to replace Equipment which has suffered an Event of Loss pursuant to the provisions of Section 13(c) of the Lease, all such replacement equipment shall be deemed to be "Equipment" for purposes of this Agreement, shall immediately be, without further action on the part of either Debtor or Lender, and shall become subject to the first priority security interest of Lender created hereunder (and shall be free and clear of all other Liens, other than the rights of Lessee under the Lease) and Debtor shall execute or cause to be executed and delivered by Lessee such Code financing statements, supplements and other

documents as Lender shall request in connection therewith to subject the replacement Equipment to Lender's first priority security interest hereunder and Debtor shall deliver to Lender all invoices and bills of sale conveying good and marketable title to such replacement Equipment to Debtor and evidence of payment in full of the purchase price and Debtor shall take such further action as Lender may request in connection therewith to carry out the purposes of this Section 2.3(c) and this Agreement.

2.4 Use of Proceeds. The proceeds of the Loan shall be applied by Debtor solely in payment (or reimbursement of Debtor's payment) of the Cost of the Unit of Equipment.

### SECTION 3. CONDITIONS OF BORROWING.

3.1 Conditions of Loan. Lender shall not be required to make the Loan hereunder unless on the Closing Date of such Loan:

(a) Certificate of Incumbency of Debtor. Lender shall have received a certificate of incumbency of Debtor signed by the Secretary or Assistant Secretary of Debtor, which certificate shall certify the names of the officers of Debtor authorized to execute any documents hereunder or under any other related document on behalf of Debtor, together with specimen signatures of such officers, and Lender may conclusively rely on such certificate until receipt of a further certificate of the Secretary or Assistant Secretary of Debtor cancelling or amending the prior certificate and submitting the signatures of the officers named in such further certificate.

(b) Resolutions. Lender shall have received a certified copy of all corporate proceedings of Debtor evidencing that all action required to be taken in connection with the authorization, execution, delivery and performance of this Agreement, the Note the Lease, the CIS Assignment and the CIS Bill of Sale and the transactions contemplated hereby and thereby has been duly taken.

(c) Opinion of Debtor's Counsel. Lender shall have received the written opinion addressed to it of counsel for Debtor satisfactory to Lender, as to matters contained in Sections 4.1 through 4.9, inclusive, and Section 4.12, and as to such other matters incident to the transactions contemplated by this Agreement as Lender may reasonably request.

(d) Original Lease. Lender shall have received the manually executed original of counterpart number 1 of the Lease.

(e) Certificates of Incumbency. Lender shall have received certificates of incumbency of each of Lessee, Guarantor and CIS signed by the Secretary or Assistant Secretary of said parties, which certificates shall certify the names of the officers of each of Lessee, Guarantor and CIS, as the case may be, authorized to execute the agreements and documents described herein and any other related documents on behalf of Lessee, Guarantor or CIS together with specimen signatures of such officers. Lender may

conclusively rely on such certificates until receipt of a further certificate of the Secretary or Assistant Secretary of Lessee, Guarantor or CIS, as the case may be, cancelling or amending the prior certificate and submitting the specimen signatures of the officers named in such further certificate.

(f) Resolutions. Lender shall have received a certified copy of all corporate proceedings of Lessee, Guarantor and CIS evidencing that all action required to be taken in connection with the authorization, execution, delivery and performance of the Lease, the Consent of Lessee, the CIS Assignment, the CIS Bill of Sale, CIS's Consent, the Guaranty, Guarantor's Consent and the transactions contemplated by such documents has been duly taken.

(g) Opinions of Counsel. Lender shall have received the written opinion of counsel for each of Lessee, Guarantor and CIS, such counsel to be satisfactory to Lender, as to such matters as Lender may reasonably request.

(h) Consent of Lessee. Lender shall have received the Consent to Assignment and Agreement (the "Consent of Lessee"), which shall have been duly executed and delivered by Lessee's authorized officer and which shall be satisfactory in form and substance to Lender.

(i) CIS Documents. Lender shall have received true, accurate and complete copies of the CIS Assignment and the CIS Bill of Sale and CIS shall have executed and delivered to Lender CIS's Consent which shall be satisfactory in form and substance to Lender.

(j) Guaranty. Lender shall have received a true, accurate and complete copy of the Guaranty certified by Guarantor.

(k) Guarantor's Consent. Lender shall have received the Guarantor's Consent, which shall have been duly executed and delivered by Guarantor's authorized officer and which shall be satisfactory in form and substance to Lender.

(l) Supplement. Debtor shall have executed and delivered to Lender the Supplement describing in a manner satisfactory to Lender the Unit of Equipment to be financed by the Loan.

(m) Note. The Note evidencing the Loan shall have been duly executed and delivered by Debtor to Lender.

(n) Equipment Delivery. The Unit of Equipment being financed by the Loan shall have been duly delivered to and accepted by Lessee, as lessee, and by Debtor, as owner, and Lender shall have received such evidence of such acceptance as is deemed necessary or desirable by Lender.

(o) Purchase Agreements, Invoices and Title. Debtor shall be the sole owner of Unit of Equipment and Lender shall have received true, accurate and complete copies of the purchase agreement or purchase agreements and the invoice or invoices covering the acquisition of the items of Equipment constituting the Unit of Equipment being financed with the Loan, together with copies of all bills of sale conveying such items to Debtor, including, without limitation, a full warranty bill of sale from General Electric to CIS and the CIS Bill of Sale, all of which shall be satisfactory, in form and substance, to Lender.

(p) Payment of Equipment Cost. Lender shall be satisfied that the Cost of each item of Equipment constituting the Unit of Equipment being financed by the Loan has been, or concurrently with the making of the Loan will be, fully paid by the owner thereof, and Lender shall have received proof of such payment.

(q) Insurance. Lender shall have received evidence satisfactory to it that the Unit of Equipment being financed by the Loan is insured in accordance with the provisions of this Agreement.

(r) Security Interest. Debtor shall own the Equipment free and clear of all Liens, and all other Collateral, including, without limitation, the Lease and the Guaranty, shall be free and clear of all Liens (except for the first priority security interest of Lender created by this Agreement, and the rights of Lessee as lessee of the Equipment under the Lease). All filings, recordings and other actions deemed necessary or desirable by Lender in order to establish, protect, preserve and perfect its security interest in the Collateral as a valid perfected first priority security interest shall have been duly effected, including, without limitation, the filing of appropriate documents with the Interstate Commerce Commission and Code financing statements and the receipt and recordation of landlord and/or mortgagee waivers or disclaimers and/or severance agreements, all in form and substance satisfactory to Lender, and all fees, taxes and other charges relating to such filings and recordings shall have been paid by Debtor.

(s) Representations. (i) The representations and warranties contained in this Agreement, the Supplement, the CIS Assignment, the CIS Bill of Sale, CIS's Consent, the Lease, the Consent of Lessee, the Guaranty and Guarantor's Consent shall be true and correct in all respects on and as of the date of the making of the Loan with the same effect as if made on and as of the date; (ii) no Default or Event of Default shall be in existence on the date of the making of the Loan or shall occur as a result of the Loan; and (iii) the acceptance by Debtor of the Loan shall constitute a representation and warranty by Debtor that the statements contained in clauses (i) and (ii) above are true and correct on the date of the Loan.

(t) No Adverse Change. In the sole judgment of Lender, there shall have been no material adverse change in the financial condition, business or operations of Debtor, Lessee or Guarantor.

(u) Other Documents and Information. Lender shall have received from Debtor, in form and substance satisfactory to Lender, such other documents and information as Lender shall reasonably request.

(v) Legal Matters. All legal matters with respect to all legal documents executed in connection with the transactions contemplated by this Agreement, the Lease, the CIS Assignment, the CIS Bill of Sale or the Guaranty and all other ancillary matters in connection therewith shall be satisfactory to counsel for Lender.

#### SECTION 4. REPRESENTATIONS AND WARRANTIES.

In order to induce Lender to enter into this Agreement and to make the Loan, Debtor represents and warrants to Lender that:

4.1 Organization. Debtor is a corporation duly organized, validly existing and in good standing under the laws of the State of Indiana, has the necessary authority and power to own and lease the Equipment and its other assets and to transact the business in which it is engaged, and is duly qualified to do business in the jurisdiction where the Equipment is located. Debtor's correct legal name is Banc One Equipment Finance, Inc. and the only other legal name used by Debtor within the past six years was American Fletcher Leasing Corporation.

4.2 Power and Authority. Debtor has full power, authority and legal right to execute and deliver this Agreement, the Note, the CIS Assignment and any agreements relating thereto, to perform its obligations hereunder and thereunder, to borrow hereunder, to grant the security interests created by this Agreement and to lease the Equipment under the Lease.

4.3 Consents and Permits. No consent of any other party (including any stockholders, trustees or holders of indebtedness), and no consent, license, approval or authorization of, exemption by, or registration or declaration with, any governmental body, authority, bureau or agency is required in connection with the execution, delivery or performance by Debtor of this Agreement, the Note or the CIS Assignment, or the validity or enforceability of the Lease, the CIS Assignment, this Agreement or the Note.

4.4 No Legal Bar. The execution, delivery and performance by Debtor of the CIS Assignment, this Agreement and the Note do not and will not violate any provision of any applicable law or regulation or of any judgment, award, order, writ or decree of any court or governmental instrumentality, will not violate any provision of the charter or by-laws of Debtor and will not violate any provision of or cause a default under any mortgage,

indenture, contract, agreement or other undertaking to which Debtor is a party or which purports to be binding upon Debtor or upon any of its assets, and will not result in the creation or imposition of any Lien on any of the assets of Debtor other than the security interests intended to be created hereby or the rights of Lessee under the Lease.

4.5 No Defaults. Debtor is not in default, and no event or condition exists which after the giving of notice or lapse of time or both would constitute an event of default, under any mortgage, indenture, contract, agreement, judgment or other undertaking to which Debtor is a party or which purports to be binding upon Debtor or upon any of its assets, except for any such default, event or condition which, individually or in the aggregate, would not affect Debtor's ability to perform its obligations under the Lease, the CIS Assignment, this Agreement, the Note or any such mortgage, indenture, contract, agreement, judgment or other undertaking.

4.6 Enforceability. This Agreement and the CIS Assignment have each been duly authorized, executed and delivered by Debtor and each constitutes legal, valid and binding obligations of Debtor enforceable in accordance with their respective terms. When executed and delivered, the Note and Supplement shall have been duly authorized, executed and delivered by Debtor and each shall constitute legal, valid and binding obligations of Debtor enforceable in accordance with their respective terms.

4.7 No Litigation. There is no action, suit, investigation or proceeding (whether or not purportedly on behalf of Debtor) pending or threatened against or affecting Debtor or any of its assets (a) which involves any of the Collateral or any of the transactions contemplated by the Lease, the Consent of Lessee, the Guaranty, the CIS Assignment, the CIS Bill of Sale or this Agreement; or (b) which, if adversely determined, could have an adverse effect upon the transactions contemplated by the Lease, the Consent of Lessee, the Guaranty, the CIS Assignment, the CIS Bill of Sale or this Agreement or a material adverse effect on the business, operations or financial condition of Debtor.

4.8 Title; Liens. On the Closing Date, Debtor shall have good, valid and marketable title to, and shall be the sole owner and holder of all right, title and interest in and to, the Collateral. On the Closing Date, the Collateral shall be free and clear of all Liens except: (i) with respect to the Equipment, the rights of Lessee as lessee of the Equipment under the Lease; and (ii) the rights of Lender created by this Agreement.

4.9 Lender's Security Interest. On the Closing Date Lender shall have a legal, valid, continuing and perfected first priority security interest in the Collateral, prior and superior to all other Liens, and all filings, recordings or other actions necessary or desirable in order to establish, protect and perfect such security interest in favor of Lender as a perfected first

priority security interest in such Collateral will have been duly effected, and all taxes, fees and other charges in connection therewith shall have been duly paid.

4.10 Impositions and Licenses. All Impositions have been, or when due, will be, paid in full. All licenses, permits and certificates which were, or may be required, to be obtained in connection with the acquisition of the Equipment by CIS and/or Debtor, or the lease of the Equipment under the Lease, have been, or when due, will be obtained.

4.11 Lease and Guaranty. The Lease, the Guaranty and all related instruments sold, assigned and delivered by CIS to Debtor are genuine, valid, enforceable (except as such enforceability may be subject to limitations imposed by bankruptcy, insolvency, moratorium or other limitations on creditor's remedies of general application), non-cancellable (except for the termination provision set forth in Section 18 of the Lease) and constitute the original counterpart (with the exception of duplicate original counterparts which shall be delivered to Lender) of the instruments executed for the lease by CIS of the Equipment, and each of the Lease and the Guaranty is and will continue to be free from defenses, counterclaims and offsets arising by, through or under CIS or Debtor. To the best of Debtor's knowledge, all statements contained in the Lease and the Guaranty are true and correct. The Lease and the Guaranty are each in full force and effect.

4.12 Counterparts of Lease. The manually executed counterpart no. 1 of the Lease has been delivered to Lender.

4.13 Assignment of Lease. Each of the CIS Assignment and the CIS Bill of Sale constitutes a legal, valid and binding obligation of CIS and Debtor, enforceable against CIS and Debtor in accordance with its terms except as such enforcement may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws of general applicability affecting the enforcement of creditors' rights or by general principles of equity. Pursuant to the provisions of the CIS Assignment, CIS assigned all of its right, title and interest as lessor under the Lease to Debtor, and notwithstanding anything to the contrary contained in the CIS Assignment or otherwise, CIS (i) has no right to invoice Lessee for rental payments or otherwise and has no rights whatsoever under the Lease, including no right to collect any rentals or other amounts payable under the Lease, and (ii) has no lien whatsoever on the Equipment or the Lease. Debtor has assumed and shall perform all obligations of "Lessor" under the Lease.

4.14 Performance Under Lease. To the best of Debtor's knowledge, Lessee and CIS have performed and observed each term, provision, covenant and condition contained in the Lease to be performed or observed by Lessee and CIS, respectively, to the date of this Agreement.



4.15 No Amendments to Lease. To the best of Debtor's knowledge, the Lease constitutes the entire agreement of CIS, as lessor and of Lessee, as lessee with respect to the Equipment and the lease thereof and the Lease has not been amended, supplemented or otherwise modified in any manner. Other than the Lease, the CIS Bill of Sale, the CIS Assignment, the Consent of Lessee and this Agreement, none of Debtor, and to the best of Debtor's knowledge, CIS or Lessee has entered into any understanding or agreement (oral or in writing) relating to the Equipment or the lease or use thereof or the transactions contemplated hereby or thereby or any other transactions contemplated or permitted by this Agreement with each other or with any other person or entity.

4.16 No Defenses. Debtor is not aware of any defense, or set-off which Lessee has, or may have, in connection with the Lease or of any event which would constitute a default with respect to the Lease.

4.17 Sale by Lessee. (a) Without limiting the generality of any of the foregoing representations and warranties, the sale by CIS to Debtor of all of the items of Equipment does not and will not contravene any law, statute, regulation, judgment or decree applicable to CIS or Debtor, including, but not limited to, laws or statutes regarding fraudulent conveyances, bankruptcy, creditors' rights or bulk transfers and no authorization, approval, license, filing or registration with any court or governmental agency or instrumentality is necessary in connection with any such sale.

(b) The payment by Debtor to CIS of the purchase price of the Equipment is fair consideration for the Equipment within the meaning of applicable state and federal laws.

## SECTION 5. COVENANTS.

Debtor covenants and agrees that from and after the date hereof and so long as the Commitment or the Note is outstanding:

### 5.1 Notices.

(a) Debtor will promptly give written notice to Lender of (i) the occurrence of any Default or Event of Default; (ii) the occurrence of any Event of Loss; (iii) the commencement or threat of any material litigation or proceedings affecting Debtor or any of the Collateral and, to the extent it has knowledge thereof, any material litigation or proceedings affecting Lessee or CIS; and (iv) any dispute between Debtor and any governmental regulatory body or other party that involves any of the Collateral or that might materially interfere with the normal business operations of Debtor.

(b) Debtor will promptly deliver to Lender a copy of each communication received from Lessee and/or CIS with respect to the Lease.

5.2 Laws; Obligations; Operations. Debtor will (i) duly observe and conform to all requirements of any governmental authorities relating to the conduct of its business or to its properties or assets or to the performance of its obligations under this Agreement and the Lease; (ii) maintain its corporate existence and obtain and keep in full force and effect all rights, franchises, licenses and permits which are necessary to the proper conduct of its business; (iii) obtain or cause to be obtained as promptly as possible any governmental, administrative or agency approval and make any filing or registration therewith which at the time shall be required with respect to the performance of its obligations under this Agreement or the Lease or the operation of its business; and (iv) pay all Impositions.

5.3 Inspection. Lender or its authorized representative may at any reasonable time or times inspect the Collateral and, following the occurrence and during the continuation of an Event of Default, may at any reasonable time or times inspect the books and records of Debtor.

5.4 Books. Debtor will keep proper books of record and account in which full, true and correct entries in accordance with generally accepted accounting principles will be made of all dealings or transactions in relation to its business and activities.

5.5 Financial Information. Debtor will furnish or cause to be furnished to Lender such financial and other information as Lender may from time to time reasonably request.

5.6 Further Assurances. Debtor will promptly, at any time and from time to time, at its sole expense, execute and deliver or cause to be executed and delivered to Lender such further instruments and documents, and take such further action, as Lender may from time to time reasonably request in order to further carry out the intent and purpose of this Agreement and/or the Lease and to establish and protect the rights, interests and remedies created, or intended to be created, in favor of Lender hereby and thereby (it being the intent of the parties hereto and of CIS that Lender shall have a first (and only) perfected security interest in the Lease and the Equipment, and the sole right to exercise all rights and remedies with respect to the Lease, but Lender shall not have any of the obligations as "Lessor" under the Lease), which actions shall include, without limitation, the execution, delivery, recordation and filing of Interstate Commerce Commission documents and Code financing statements and continuation statements with respect to the Collateral. Debtor hereby authorizes Lender, in such jurisdictions where such action is authorized by law, to effect any such recordation or filing of assignment documents and lien notice documents without the signature of Debtor thereto. Debtor will pay, or reimburse Lender for, any and all fees, costs and expenses of whatever kind or nature incurred in connection with the creation, preservation and protection of Lender's security

interest in the Collateral, including, without limitation, all fees and taxes in connection with the recording or filing of instruments and documents in public offices, payments or discharge of any taxes or Liens upon or in respect of the Collateral, premiums for insurance with respect to the Collateral and all other fees, costs and expenses in connection with protecting, maintaining or preserving the Collateral and Lender's interests therein, whether through judicial proceedings or otherwise, or in connection with defending or prosecuting any actions, suits or proceedings arising out of or related to the Collateral; and all such amounts that are paid by Lender shall, until reimbursed by Debtor, constitute Obligations of Debtor secured by the Collateral.

5.7 No Assignments or Other Disposition of Collateral. Except for the leasing of the Equipment pursuant to the Lease, Debtor will not assign, sell, convey, transfer, exchange, further lease or otherwise relinquish possession or dispose of any of its right, title or interest in, to or under this Agreement, the Note or any of the Collateral or attempt or offer to do or permit CIS or the Lessee to do any of the foregoing. Upon the maturity of the Note in accordance with its terms and payment in full of all of Debtor's Obligations hereunder, Lender shall release its security interest in the Collateral and execute such Code financing statements and other such documents as Debtor may reasonably request to evidence the termination of Lender's lien on the Collateral.

5.8 No Liens. Debtor will not create, assume or suffer to exist any Lien of any kind upon any of the Collateral except for the security interests created hereby and the rights of Lessee under the Lease.

5.9 Debtor's Title; Lender's Security Interest; Personal Property. Debtor will warrant and defend its good and marketable title to the Equipment, and Lender's perfected first priority security interest in the Collateral, against all claims and demands whatsoever. Debtor agrees that the Equipment shall be and at all times remain separately identifiable personal property. Debtor shall, at its expense, take such action (including the obtaining and recording of waivers) as may be necessary to prevent any third party from acquiring any right to or interest in the Equipment by virtue of the Equipment being deemed to be real property or a part of real property or a part of other personal property, and if at any time any person shall claim any such right or interest, Debtor shall, at its expense, cause such claim to be waived in writing or otherwise eliminated to Lender's satisfaction within 30 days after such claim shall have first become known to Debtor.

5.10 No Changes in Debtor. Debtor will not (a) without Lender's prior written consent, which consent shall not be unreasonably withheld, enter into any transaction of merger or consolidation unless it is the surviving corporation and after

giving effect to such merger or consolidation its net worth equals or exceeds that which existed prior to such merger or consolidation; or (b) liquidate or dissolve; or (c) without Lender's prior written consent, which consent shall not be unreasonably withheld, sell, transfer or otherwise dispose of all or any substantial part of its assets; or (d) change the form of organization of its business; or (e) without thirty (30) days prior written notice to Lender, change its name or its place of business.

5.11 Restriction on Lease Actions. Debtor will not, without the prior written consent of Lender, declare a default under the Lease, or exercise any remedies under the Lease, or enter into or consent to or permit any cancellation, termination, amendment, supplement or modification of or waiver with respect to the Lease or give any consent or approval as to any matter arising out of the Lease, and any such attempted declaration, exercise, cancellation, termination, amendment, supplement, modification, waiver or consent or approval shall be void and of no effect unless Debtor shall have received the prior written consent thereto of Lender. Notwithstanding the foregoing of this Section 5.11, there are expressly excepted and reserved from the assignment, pledge and grant of security interest set forth in this Agreement the Excepted Rights (as defined below). As used in this Agreement, "Excepted Rights" shall mean: (a) the right to notify Lessee of its failure to maintain the Equipment under Section 7(a) of the Lease and to demand that Lessee comply with the maintenance requirements set forth in Section 7(a) of the Lease; (b) the right to demand and receive all payments of indemnity under Sections 4 and 12(a) of the Lease which by their terms are payable to or for the benefit of Debtor (except to the extent Lender shall have the right to any such payments); (c) the right to demand and receive all payments of indemnity under Section 17 of the Lease; and (d) the right to demand and receive all insurance proceeds payable under general public liability insurance policies maintained by Lessee under Section 14(a) of the Lease which by the terms of such policies are payable to or for the benefit of Debtor (except to the extent Lender shall have the right to any such insurance proceeds). Debtor agrees that in connection with its exercise of any of the Excepted Rights, Debtor shall not have the right to declare a default or an Event of Default under the Lease or to pursue or enforce any remedies of the "Lessor" under the Lease; provided, that Lender agrees that Debtor may pursue by separate legal action any of the Excepted Rights.

5.12 Insurance. Debtor shall obtain and maintain or cause to be obtained and maintained at all times on the Equipment, at its or Lessee's expense, "All-Risk" physical damage and if required by Lender, liability (including bodily injury and property damage) insurance in such amounts, against such risks, in such form and with such insurers as shall be satisfactory to Lender; provided, however, that the amount of physical damage insurance shall not be less than 110% of the then aggregate

outstanding principal amount of the Note. All physical damage insurance policies shall be made payable to Lender as its interest may appear; if liability insurance is required by Lender, the liability insurance policies shall name Lender as additional insured. All such insurance policies will be in form, amount and substance acceptable to Lender. Debtor shall assign and deliver the policies of insurance or certificates thereof to Lender prior to policy expiration or upon Lender's request, but Lender shall bear no duty or liability to ascertain the existence or adequacy of such insurance. Each insurance policy shall, among other things, require that the insurer give Lender at least 30 days' prior written notice of any alteration in the terms of such policy or of the cancellation thereof and that the interests of Lender be continued insured regardless of any breach of or violation by Debtor or Lessee of any warranties, declarations or conditions contained in such insurance policy. The insurance maintained under this Section 5.12 shall be primary with no other insurance maintained by Lender (if any) contributory.

## SECTION 6. SECURITY INTEREST.

6.1 Assignment and Grant of Security Interests. As collateral security for the prompt and complete payment and performance of all the Obligations and in order to induce Lender to enter into this Agreement and make the Loan in accordance with the terms hereof, Debtor hereby assigns, pledges, and hypothecates to Lender, and grants to Lender a continuing first priority security interest in and to, all of its present and future right, title and interest in, to and under all of the following property, rights, benefits and interests, referred to collectively herein as the "Collateral": (a) the Lease, the Guaranty, the CIS Assignment and the CIS Bill of Sale (including any and all amendments, extensions and renewals, but all such amendments, extensions and renewals shall be void without Lender's prior written consent) and all rentals and other sums due and to become due thereunder or in connection therewith including, without limitation, all Rental Installments and all rights and claims of Debtor as "Lessor" or assignee of Lessor, now or hereafter existing, (i) under any insurance, indemnities, warranties and guaranties provided for or arising out of or in connection with the Lease, the Consent of Lessee, the Guaranty, Guarantor's Consent, the CIS Assignment, the CIS Bill of Sale, CIS's Consent and the Equipment, (ii) for any damages arising out of or for breach or default under or in connection with the Lease, the Consent of Lessee, the Guaranty, Guarantor's Consent, the CIS Assignment, the CIS Bill of Sale and CIS's Consent, (iii) to all other amounts from time to time paid or payable under or in connection with the Lease, the Consent of Lessee, the Guaranty, Guarantor's Consent, the CIS Assignment, the CIS Bill of Sale and CIS's Consent, and (iv) to amend, modify, grant consents or terminate the Lease, the Consent of Lessee, the Guaranty, Guarantor's Consent, the CIS Assignment, the CIS Bill of Sale and CIS's Consent and to exercise or enforce any and all covenants, remedies, powers and privileges thereunder and; (b)

the Equipment and any and all accessories, additions, attachments, modifications, improvements, upgrades and accessions thereto, and substitutions and replacements therefor; and (c) to the extent not otherwise included, all Proceeds of any or all of the foregoing.

6.2 Lender Appointed as Attorney-in-Fact.

(a) Debtor hereby irrevocably constitutes and appoints Lender and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Debtor and in the name of Debtor or in its own name, from time to time in Lender's discretion, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be deemed necessary or desirable by Lender to protect and preserve, and/or exercise its rights and remedies with respect to, the Collateral and, without limiting the generality of the foregoing, hereby gives Lender the power and right, on behalf of Debtor and without notice to or assent by Debtor, to do any of the following: to demand, enforce, collect, receive, receipt, and give release for any monies due or to become due under or arising out of or with respect to, any of the Collateral, and to endorse all checks and other instruments, and to do and take all such other actions relating to any of the Collateral, and to file any claims or institute any proceedings with respect to any of the foregoing which Lender deems necessary or desirable, and to compromise any such demand, claim or action. Lender may exercise its rights pursuant to this section only upon or after the occurrence of an Event of Default.

Debtor hereby ratifies all that said attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable. Debtor consents and agrees that any of the obligations and liabilities set forth below may be extended by Lender in whole or in part, without notice to Debtor and without affecting the liability of Debtor hereunder: the obligations and liabilities of Lessee under the Lease and the Consent of Lessee; the obligations and liabilities of Guarantor under the Guaranty and Guarantor's Consent; and the obligations and liabilities of CIS under the CIS Assignment, the CIS Bill of Sale and CIS's Consent.

(b) The powers conferred on Lender hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to Debtor for any act or failure to act.

6.3 Debtor's Duties Under the Lease. Debtor expressly agrees that, notwithstanding anything contained herein to the contrary, (a) Debtor shall at all times remain liable to observe and perform all of its duties and obligations under the Lease to the same extent as if this Agreement had not been made, (b) the exercise by Lender of any of the rights assigned hereunder shall not release Debtor from any of its duties or obligations under the Lease and (c) LENDER SHALL NOT HAVE ANY OBLIGATION OR LIABILITY UNDER THE LEASE BY REASON OF THIS AGREEMENT OR THE RECEIPT BY LENDER OF ANY PAYMENT OR PROPERTY UNDER THE LEASE OR PURSUANT HERETO, NOR SHALL LENDER BE OBLIGATED TO PERFORM OR FULFILL ANY OF THE DUTIES OR OBLIGATIONS OF THE "LESSOR" UNDER THE LEASE OR TO MAKE ANY PAYMENT THEREUNDER, or to make any inquiry as to the nature or sufficiency of any payment or property received by it thereunder, or the sufficiency of performance by any party thereunder, or to present or file any claim, or to take any action to collect or enforce any performance or the payment of any amounts or the delivery of any property which may have been assigned to it or to which it may be entitled at any time or times.

SECTION 7. EVENTS OF DEFAULT.

The following events shall each constitute an event of default (herein called "Event of Default") under this Agreement:

(a) Debtor shall fail to pay any Obligation within 10 days after the same becomes due (whether at the stated maturity, by acceleration or otherwise); or

(b) Any representation or warranty made by Debtor in connection with any transaction contemplated hereby, whether contained in this Agreement, any Supplement, the CIS Assignment or in any document, certificate or financial or other statement now or hereafter furnished by Debtor in connection with any of the foregoing documents, shall at any time prove to be untrue or misleading in any material respect as of the time when made; or

(c) Debtor shall fail to observe or perform any other covenant, condition or agreement contained in this Agreement, the Lease or the CIS Assignment, and such failure shall continue unremedied for a period of 30 days after the earlier of the date on which Debtor obtains knowledge of such failure or the date on which notice thereof shall be given by Lender to Debtor; or

(d) A default or an Event of Default (as defined in the Lease) shall occur under the Lease or Lessee shall default in its obligations under the Consent of Lessee; or

(e) CIS shall fail to observe or perform any covenant, condition or agreement contained in the CIS Assignment, the CIS Bill of Sale or CIS's Consent and such failure shall continue unremedied for a period of 30 days after the earlier of the date on which CIS obtains knowledge of such failure or the date on

which notice thereof shall be given by Lender to CIS, or, with respect to the CIS Assignment, the CIS Bill of Sale or CIS's Consent, any such agreement shall cease to be in full force and effect or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by CIS or CIS shall deny that it has any further liability to Lender with respect thereto; or

(f) Guarantor shall fail to observe or perform any covenant, condition or agreement contained in the Guaranty or Guarantor's Consent and such failure shall continue unremedied for a period of 30 days after the earlier of the date on which Guarantor obtains knowledge of such failure or the date on which notice thereof shall be given by Lender to Guarantor, or, with respect to the Guaranty or Guarantor's Consent, any such agreement shall cease to be in full force and effect or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by Guarantor or Guarantor shall deny that it has any further liability to Lender with respect thereto; or

(g) Any representation or warranty made to Lender or any other party by Lessee, Guarantor or CIS in connection with the transactions contemplated hereby, whether made in the Lease, the Consent of Lessee, the Guaranty, Guarantor's Consent, the CIS Assignment, the CIS Bill of Sale or CIS's Consent or in any other document executed and delivered in connection herewith or therewith, shall prove at any time to have been incorrect or untrue in any material respect as of the time when made; or

(h) The institution by Debtor of proceedings to be adjudicated a bankrupt or insolvent, or the consent by Debtor to the institution of bankruptcy or insolvency proceedings against it, or the commencement by Debtor of a voluntary proceeding or case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by it to the filing of any such petition or to the appointment of or taking possession by a receiver, liquidator, assigned, trustee, custodian or sequestrator (or other similar official) of Debtor or of any substantial part or its property, or the making by Debtor of any assignment for the benefit of creditors or the admission by Debtor of its inability to pay its debts generally as they become due or its willingness to be adjudicated a bankrupt or the failure of Debtor generally to pay its debts as they become due or Debtor shall cease doing business as a going concern or shall be liquidated or dissolved or the taking of corporate action by Debtor in furtherance of any of the foregoing; or

(i) The entry of a decree or order for relief by a court having jurisdiction in respect of Debtor adjudging Debtor a bankrupt or insolvent, or approving as properly filed a petition seeking a reorganization, arrangement, adjustment or composition



of or in respect of Debtor in an involuntary proceeding or case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, or assignee, custodian, trustee or sequestrator (or similar official) of Debtor or of any substantial part of its property, or ordering the winding-up or liquidation of the affairs of Debtor, and the continuance of any such decree or order unstayed and in effect for a period of 30 days.

#### SECTION 8. REMEDIES.

8.1 If an Event of Default specified in Section 7, clauses (h) or (i) above shall occur, then, and in any such event, the Commitment shall immediately terminate and the principal amount of the Note, together with accrued interest thereon and all other amounts owing under or with respect to this Agreement shall become immediately due and payable without any notice or other action by Lender, and if any other Event of Default shall occur and be continuing, then, and in any such event, Lender may, by notice of default given to Debtor, (a) terminate forthwith the Commitment and/or (b) declare the Note and all other amounts owing under or with respect to this Agreement to be forthwith due and payable, whereupon the principal amount of the Note, together with accrued interest thereon and all other amounts owing under or with respect to this Agreement shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived. During the continuance of any Event of Default hereunder, Lender shall have the right to pursue and enforce any of its rights and remedies under Section 8, Subsection 8.2 through 8.4, inclusive, hereof.

8.2 If an Event of Default shall occur and be continuing, Lender may exercise in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of secured parties under the Code or under any other applicable law. Without limiting the generality of the foregoing, Debtor agrees that in any such event, Lender, without demand of performance or other demand, advertisement or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon Debtor or any other person (all and each of which demands, advertisements and/or notices are hereby expressly waived), may forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase or otherwise dispose of and deliver the Collateral (or contract to do so), or any part thereof, in one or more parcels at public or private sale or sales, at any exchange or broker's board or at any of Lender's offices or elsewhere at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Lender shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales,

to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in Debtor, which right or equity is hereby expressly released. Debtor further agrees, at Lender's request, to assemble the Collateral, make it available to Lender at places which Lender shall reasonably select, whether at Debtor's premises or elsewhere; provided, that as to the Equipment, the return of the Equipment will be satisfactory if returned on the tracks of Lessee at a location thereon specified by Lender. Lender shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale (after deducting all reasonable costs and expenses of every kind incurred therein or incidental to the care, safekeeping or otherwise of any or all of the Collateral or in any way relating to the rights of Lender hereunder, including attorneys' fees and legal expenses) to the payment in whole or in part of the Obligations, in such order as Lender may elect and only after so applying such net proceeds and after the payment by Lender of any other amount required by any provision of law (including Section 9-504(1)(c) of the Code), need Lender account for the surplus, if any, to Debtor. If after application of the net proceeds to the Obligations and all expenses incurred in connection therewith there are any excess proceeds, Lender shall pay such proceeds to Debtor. To the extent permitted by applicable law, Debtor waives all claims, damages, and demands against Lender arising out of the repossession, retention or sale of the Collateral. Debtor agrees that Lender need not give more than 10 days' notice (which notification shall be deemed given when mailed, postage prepaid, addressed to Debtor at its address set forth in Section 13.2 hereof) of the time and place of any public sale or of the time after which a private sale may take place and that such notice is reasonable notification of such matters. Debtor shall be liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all amounts to which Lender is entitled.

If an Event of Default referred to in clause (d) of Section 7 hereof shall occur and be continuing Lender (as assignee of Debtor) may declare the Lease to be in default and may exercise all rights, powers and remedies of Debtor under the Lease (including, without limitation, Section 16 of the Lease), either in Lender's own name or in the name of the Debtor for the use and benefit of Lender.

8.3 Debtor agrees to pay all costs of Lender, including attorneys' fees, incurred with respect to the collection of any of the Obligations and the enforcement of any of its respective rights hereunder.

8.4 Debtor hereby waives presentment, demand, protest or any notice, except as hereinabove provided in Section 8 (to the extent permitted by applicable law) of any kind in connection with this Agreement or any Collateral.

## SECTION 9. COLLECTION.

(a) Except for the collection of Impositions and other amounts included under Excepted Rights, Debtor shall not demand and/or collect directly from Lessee any amounts due and payable by Lessee under the Lease. In the event that any amounts due and payable by Lessee under the Lease or any Proceeds of any of the Collateral are received by Debtor (other than Impositions and amounts included under Excepted Rights), such amounts shall be held by Debtor in trust for Lender, shall be segregated from other funds of Debtor, and shall be immediately paid by Debtor to Lender in the form received or with any necessary endorsement.

(b) Debtor hereby authorizes Lender to sign and endorse Debtor's name on any checks, drafts, money orders or other forms of payment (including proceeds of insurance) that may come into Lender's possession as payments of, on or under the Lease, and to sign Debtor's name to any related document. Debtor hereby irrevocably constitutes and appoints Lender as its duly constituted and lawful attorney-in-fact for such purposes and for the purposes of the applicable provisions of Section 6.2 hereof, and agrees to execute and deliver to Lender such further instruments and documents, and to take such other action, as Lender may request to effectuate any of the foregoing.

## SECTION 10. APPLICATION OF AMOUNTS RECEIVED BY LENDER.

10.1 All amounts received by Lender with respect to the Collateral shall be applied by Lender in the manner set forth below in this Section 10.

(a) Rentals. So long as no Default or Event of Default shall have occurred and be continuing, each Rental Installment (including each payment of interest on any overdue Rental Installments) received by Lender shall be applied first to the payment of installments of principal and interest (including interest on overdue payments owing under the Note) on the Note which have become due or which become due on or before the day on which such Rental Installment is due from Lessee, and second, the balance, if any, of such Rental Installment shall be paid by Lender to Debtor.

(b) Casualty or Termination Payments. So long as no Default or Event of Default shall have occurred and be continuing, any amounts received by Lender from Lessee as a result of an Event of Loss with respect to an item of Equipment (including, without limitation, any payment of Stipulated Loss Value, insurance or condemnation proceeds) or as a result of the early termination of the Lease under Section 18(d) of the Lease shall be applied first to the prepayment amounts required to be paid by Section 2.3(a) hereof or Section 13.4 hereof, as the case may be, second to the payment in full of all other Obligations which are then due and payable, and third, the balance, if any, shall be paid by Lender to Debtor for distribution in accordance with the terms of the Lease.

(c) Other Amounts. So long as no Default or Event of Default shall have occurred and be continuing, all amounts from time to time received by Lender from Lessee (other than amounts specified in clauses (a) or (b) of this Section 10), (i) if due to Lender pursuant to the terms of this Agreement or the Lease, shall be applied by Lender to the purpose for which such payment was made, (ii) if provision as to its application is made in this Agreement or in the Lease, Lender shall, in its sole discretion, either apply such payment to the purpose for which it was made or pay it to Debtor, which shall so apply it, and, (iii) if due to Debtor or Lessee, pay it to Debtor for distribution by Debtor in accordance to the terms of the Lease.

(d) Application After Declaration. All payments received and amounts realized by Lender after an Event of Default shall have occurred and be continuing and after Lender has either declared (as assignee from Debtor of the Lease) the Lease to be in default pursuant to the terms thereof or declared the Note to be due and payable pursuant to Section 8 hereof, as well as all payments or amounts then held by Lender as part of the Collateral, shall be applied pursuant to Section 8 hereof.

(e) Application After Default or Event of Default. All payments received and amounts realized by Lender after a Default or an Event of Default shall have occurred and be continuing, prior to the declaration of the Lease to be in default or the acceleration of the Note, which funds would, but for the provisions of this Section 10(e) be paid to Debtor, shall be held by Lender as part of the Collateral until such time as no Defaults or Events of Default shall be continuing hereunder (at which time such funds shall be applied as otherwise provided herein) or until such funds are applied pursuant to Section 8 hereof.

#### SECTION 11. INDEMNITY.

(a) Debtor agrees to pay when due, and to indemnify and hold Lender harmless from all license, filing and registration fees and assessments, and all Impositions now or hereafter imposed by any governmental body or agency upon or with respect to (x) this Agreement, the Note, or the creation and continued perfection of the security interest created hereby, and (y) any of the Collateral, including, without limitation, the use, possession, ownership and operation of any of the Equipment.

(b) To the extent that the indemnity provisions of Sections 4 and/or 12 of the Lease are not legally binding on Lessee or are not enforceable by Lender against Lessee, Debtor hereby assumes liability for, and indemnifies and holds Lender harmless against, all claims, costs, expenses (including reasonable legal fees) damages, and liabilities arising from or pertaining to the manufacture, assembly, installation, use, operation or sale or disposition of, or in any way relating to, the Collateral or any interest therein.

(c) Without limiting the generality of any other provision of this Agreement, Debtor shall indemnify, protect, save and keep harmless Lender from and against any reduction in the amount payable out of the Collateral to Lender with respect to the Obligations, or any other loss, cost or expense (including legal fees) incurred by Lender as a result of Debtor's breach of Sections 5.7 or 5.8 hereof.

(d) Debtor hereby indemnifies and holds Lender harmless against all claims, losses, damages and expenses arising as a result of or relating to any breach by the Debtor of any of the provisions of Section 9(a) of this Agreement and for expense, loss or damage arising out of the transfer of the Equipment from CIS to Debtor and from any claims or suits brought by CIS against Lender in connection therewith.

(e) Without limiting the generality of the foregoing, Debtor hereby agrees that in any suit, proceeding or action brought by Lender under the Lease or the Consent of Lessee for any sum owing thereunder, or to enforce any provision of the Lease or the Consent of Lessee, Debtor will save, indemnify, and keep Lender harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or reduction of liability whatsoever of Lessee, arising out of a breach by Debtor of any obligation under the Lease or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of Lessee or CIS from Debtor.

(f) The indemnities and agreements set forth in this Section 11 shall survive the expiration or earlier termination of this Agreement.

## SECTION 12. RIGHTS OF LESSEE; NATURE OF DEBTOR'S OBLIGATIONS.

(a) Rights of Lessee. So long as Lessee is not in default of its obligations under the Lease or of its obligations to Lender under the Consent of Lessee, Lender will not interfere with Lessee's peaceful use and enjoyment of the Equipment subject to and in accordance with the provisions of the Lease as supplemented and amended by the Consent of Lessee.

(b) Nature of Debtor's Obligations. Lender and Debtor agree that the Note and the obligations evidenced thereby and the other Obligations are without recourse to the Debtor, that Lender shall look solely to the Collateral for the satisfaction thereof, and that Debtor shall have no personal liability for the satisfaction thereof, except as expressly provided in the following sentence. Debtor expressly agrees that Debtor shall be personally liable to Lender for the indemnities made in Section 11 hereof, for its representations and warranties made in the entire Section 4 hereof, in the CIS Assignment and in any letter, certificate or other document delivered to Lender in connection with the transactions contemplated hereby, for its own gross negligence or wilful misconduct, and for its covenants and

agreements made in the following Sections of this Agreement: all of Section 5, Section 6.3, Section 9(a), and Section 13.3. Notwithstanding anything to the contrary set forth herein, amounts payable by Debtor pursuant to the immediately preceding sentence shall be paid immediately upon receipt of Lender's invoice therefor, and said invoice shall constitute notice for all purposes of clause (a) of Section 7 hereof. Nothing contained in this Section 12(b) shall limit or be deemed to limit the right of Lender to proceed against Debtor's right, title and interest in and to the Collateral, to seek injunctive or other equitable relief with respect to any of Debtor's obligations hereunder or with respect hereto, and/or to proceed against Lessee or CIS.

SECTION 13. MISCELLANEOUS.

13.1 No Waiver; Cumulative Remedies. No failure or delay on the part of Lender in exercising any right, remedy, power or privilege hereunder or under the Note shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. No right or remedy in this Agreement is intended to be exclusive but each shall be cumulative and in addition to any other remedy referred to herein or otherwise available to Lender at law or in equity; and the exercise by Lender of any one or more of such remedies shall not preclude the simultaneous or later exercise by Lender of any or all such other remedies. To the extent permitted by law, Debtor waives any rights now or hereafter conferred by statute or otherwise which limit or modify any of Lender's rights or remedies under this Agreement.

13.2 Notices. All notices, requests and demands to or upon any party hereto shall be deemed to have been duly given or made when deposited in the United States mail, first class postage prepaid, addressed to such party as follows, or to such other address as may be hereafter designated in writing by such party to the other party hereto:

DEBTOR: Banc One Equipment Finance, Inc.  
111 Monument Circle  
Indianapolis, Indiana 46277  
Attention: \_\_\_\_\_

LENDER: The CIT Group/Equipment Financing, Inc.  
270 Park Avenue  
New York, New York 10017  
Attention: Vice President/Credit - EPF

with a copy to:

The CIT Group/Equipment Financing, Inc.  
1400 Renaissance Drive, Suite 400  
Park Ridge, Illinois 60068  
Attention: Regional Credit Manager - EPF

13.3 Payment of Expenses and Taxes; Indemnity; Performance by Lender of Debtor's Obligations.

(a) Debtor agrees, whether or not the transactions contemplated by this Agreement shall be consummated, to pay (i) all fees and taxes in connection with the filing or recording of this Agreement or any other document or instrument required hereby with the Interstate Commerce Commission, any applicable Code filing office and any other applicable public office; and (ii) all costs and expenses of Lender in connection with any applicable lien search with the Interstate Commerce Commission and any applicable Code filing office, including all legal fees and disbursements arising in connection therewith. Debtor also agrees to pay, and to indemnify and save Lender harmless from any delay in paying, all taxes, including without limitation, sales, use, stamp and personal property taxes (other than any corporate income taxes payable by Lender with respect to the payments made to Lender hereunder or thereunder) and all license, filing, and registration fees and assessments and other charges, if any, which may be payable or determined to be payable in connection with the execution, delivery and performance of this Agreement or the Note or any modification thereof.

(b) Debtor hereby further agrees, whether or not the transactions contemplated by this Agreement shall be consummated to pay, indemnify, and hold Lender harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, out-of-pocket costs, expenses or disbursements of any kind or nature whatsoever arising with respect to or in connection with the execution, delivery, enforcement, performance or administration of this Agreement and the Note (the foregoing being referred to as the "indemnified liabilities"), provided, that Debtor shall have no obligation hereunder with respect to indemnified liabilities arising from the gross negligence or willful misconduct of Lender.

(c) If Debtor fails to perform or comply with any of its agreements contained herein and if Lender elects (in its sole discretion) to perform or comply, or otherwise cause performance or compliance, with such agreement, then the expenses of Lender incurred in connection with such performance or compliance, together with interest thereon at the rate provided for in the Note shall be payable by Debtor to Lender on demand and until such payment shall constitute Obligations secured hereby.

13.4 Prepayment Due to Termination of Lease. In the event that Lessee shall elect to terminate the lease of all of the Equipment in accordance with Section 18(d) of the Lease and shall have complied with all of the terms and conditions of Section 18(d) of the Lease, Debtor shall pay to Lender the aggregate of the following amounts on June 30, 1995, which is the effective date of the termination of the Lease: the unpaid principal amount of the Note; interest accrued on such principal amount to the

date of such prepayment; and late charges, if any, and any other sums which may be due with respect to this Agreement. Upon payment in full of any such prepayment amount, and so long as no Default or Event of Default has occurred and is continuing, the Collateral shall be released from the security interest of this Agreement.

13.5 Survival of Representations and Warranties. All representations and warranties made in this Agreement and any certificates delivered pursuant hereto or thereto shall survive the execution and delivery of this Agreement and the making of the Loans hereunder, and the agreements contained in Sections 11 and 13.3 hereof shall survive payment of the Note.

13.6 Amendments; Waivers. No provision of this Agreement, the Note, or any related agreements, may be amended or modified in any way, nor may noncompliance therewith be waived, except pursuant to a written instrument executed by Lender and Debtor. In the case of any waiver, Lender and Debtor shall be restored to their former position and rights hereunder, under the outstanding Note, and under any related agreements, and any Default or Event of Default waived shall be deemed to be cured and not continuing, but no such waiver shall in any way be, or be construed to be, a waiver of any other or subsequent default or Event of Default, or impair any right consequent thereon.

13.7 Counterparts. This Agreement may be executed by the parties hereto on any number of separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

13.8 Headings. The headings of the Sections and paragraphs are for convenience only, are not part of this Agreement and shall not be deemed to effect the meaning or construction of any of the provisions hereof.

13.9 Successors or Assigns. This Agreement shall be binding upon and inure to the benefit of Debtor and Lender and their respective successors and assigns, except that Debtor may not assign or transfer its rights hereunder or any interest herein without the prior written consent of Lender.

13.10 Merger Clause. This Agreement contains the full, final and exclusive statement of the agreement between Lender and Debtor relating to the transactions hereby contemplated.

13.11 Construction. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by law, Debtor hereby



waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect. This Agreement and the Note shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

13.12 Jurisdiction. Debtor hereby irrevocably consents and agrees that any legal action, suit, or proceeding arising out of or in any way in connection with this Agreement may be instituted or brought in the courts of the State of New York, in the County of New York, or the United States Courts for the Southern District of New York, as Lender may elect, and by execution and delivery of this Agreement, Debtor hereby irrevocably accepts and submits to, for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of any such court, and to all proceedings in such courts. Debtor irrevocably consents to service of any summons and/or legal process by registered or certified United States air mail, postage prepaid, to Debtor at the address set forth in Section 13.2 hereof, such method of service to constitute, in every respect, sufficient and effective service to process in any such legal action or proceeding. Nothing in this Agreement shall affect the right to service of process in any other manner permitted by law or limit the right of Lender to bring actions, suits or proceedings in the courts of any other jurisdiction. Debtor further agrees that final judgment against it in any such legal action, suit or proceeding shall be conclusive and may be enforced in any other jurisdiction, within or outside the United States of America, by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and the amount of the liability.

13.13 Authorization. In order to facilitate the closing of the transactions contemplated hereby, Debtor authorizes Lender to insert dates, complete blank spaces and correct typographical errors in this Agreement and any related documents, and agrees that Lender may rely upon and act pursuant to this authorization until it receives written notice to the contrary.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

THE CIT GROUP/EQUIPMENT

By: Andrew J. Kalz  
Title: Vice President

BANC ONE EQUIPMENT FINANCE, INC.

By: Paul M. Brown  
Title: Accounts Officer

Exhibit A

SUPPLEMENT

This Supplement is executed and delivered by Banc One Equipment Finance, Inc. ("Debtor") pursuant to the terms of a Limited Recourse Loan and Security Agreement ("Agreement") dated as of \_\_\_\_\_, 1988 between Debtor and The CIT Group/Equipment Financing, Inc. ("Lender"). Terms defined in the Agreement shall have the respective meanings given them in the Agreement unless otherwise defined herein or unless the context otherwise requires.

1. Debtor hereby confirms that the proceeds of the Loan made this date shall be used to purchase the items of personal property set forth below:

<u>Qty.</u>	<u>Manufacturer or Seller</u>	<u>Description</u>	<u>Identification or Road Number</u>	<u>Cost</u>
4	General Electric	Model Dash 8-40B 4-axle, turbo charged diesel locomotives.	4002, 4004, 4006 and 4008.	\$4,854,800.00 [\$1,213,700.00 each]

2. Debtor hereby represents and warrants that the above-described personal property are intended to be "Collateral" under the Agreement and have been delivered to the Lessee duly assembled and in good working order at Erie, Pennsylvania.

3. Debtor hereby represents and warrants that the above-described personal property has been accepted by Lessee for all purposes of the Lease.

4. Debtor hereby affirms that the representations and warranties set forth in of the Agreement are true and correct as of the date hereof.

5. Debtor hereby affirms that Lender has made a Loan to it for the purchase of the above-described personal property, which Loan is evidenced by a Note, in the principal amount of \$3,080,370.60 dated \_\_\_\_\_, 1988.

6. Debtor hereby affirms that Lender has the interests in the above-described personal property, the Lease and all other Collateral as set forth in Section 6.1 of the Agreement.

BANC ONE EQUIPMENT FINANCE, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT B

PROMISSORY NOTE

\$3,080,370.60

New York, New York  
July \_\_\_\_, 1988

FOR VALUE RECEIVED, BANC ONE EQUIPMENT FINANCE, INC. (the "Undersigned") promises to pay to the order of THE CIT GROUP/EQUIPMENT FINANCING, INC. ("Lender") at its office at 270 Park Avenue, New York, New York 10017 (or as Lender may otherwise designate), in lawful money of the United States, the principal sum of Three Million Eighty Thousand Three Hundred Seventy and 60/100 Dollars (\$3,080,370.60) together with interest in like money on the principal sum remaining unpaid from time to time from the date of this Note until due and payable (whether as stated, by acceleration or otherwise) at the rate of eleven and thirty-five one hundredths percent (11.35%) per annum, said principal and interest to be paid in one hundred nine (109) consecutive monthly installments, commencing on July 21, 1988 with the following installments on the twenty-first (21st) day of each month thereafter until payment in full of this Note. Each such installment shall be a payment of principal and interest in the following amounts:

one (1) installment of principal in the amount of \$19,412.88 plus interest in the amount of \$971.17 per day from the date of this Note up to but excluding July 21, 1988, said aggregate amount to be paid on July 21, 1988; ten (10) equal consecutive monthly installments of principal and interest in the amount of \$48,548.00 each commencing August 21, 1988; forty-eight (48) equal consecutive monthly installments of principal and interest in the amount of \$43,200.78 each commencing June 21, 1989; forty-nine (49) equal consecutive monthly installments of principal and interest in the amount of \$48,000.82 each commencing June 21, 1993; and one (1) installment of principal and interest in the amount of \$5,905.00 on July 21, 1997.

Each such installment shall be applied first to the payment of any unpaid interest on the principal sum and then to payment of principal. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. Whenever any amount shall become due and payable under this Note, interest thereon shall thereafter be payable at the Late Charge Rate, until such amount shall be paid in full. Any payment received after the maturity of any installment of principal shall be applied first to the payment of interest on said principal.

This Note is the Note referred to in, and is issued pursuant to, the Limited Recourse Loan and Security Agreement dated as of July \_\_, 1988 ("Security Agreement") by and between the Undersigned and Lender and the holder hereof is entitled to the benefits

thereof. Terms defined in the Security Agreement are used with the same meanings herein. This Note is secured as provided in the Security Agreement, and is subject to prepayment only as provided therein. Reference is herein made to the Security Agreement for a description of the provisions upon which the Note is issued and secured, and the nature and extent of the security and the rights of the holder hereof.

Upon the occurrence of any one or more of the Events of Default specified in the Security Agreement, the unpaid principal balance of this Note, together with interest accrued, may be declared to be (or with respect to certain Events of Default, automatically shall become) immediately due and payable as provided therein.

The Undersigned hereby waives presentment, demand for payment, notice of dishonor, and any and all other notices or demands in connection with the delivery, acceptance, performance, default or enforcement of this Note and hereby consents to any extensions of time, renewals, releases of any party to this Note, waivers or modifications that may be granted or consented to by the holder of this Note.

In the event that any holder shall institute any action for the enforcement or collection of this Note, there shall be immediately due and payable, in addition to the then unpaid principal balance hereof and any accrued interest, any late charges and all costs and expenses of such action including attorney's fees. The Undersigned and Lender in any litigation (whether or not relating to this Note) in which Lender and the Undersigned shall be adverse parties, waive trial by jury, and the Undersigned waives the right to interpose any setoff, counterclaim or defense of any nature whatsoever.

LENDER ACKNOWLEDGES AND AGREES THAT THE PERSONAL LIABILITY OF THE UNDERSIGNED WITH RESPECT TO PAYMENT OF SUMS EVIDENCED BY THIS NOTE IS LIMITED AND IS SUBJECT TO THE TERMS AND CONDITIONS CONTAINED IN THE SECURITY AGREEMENT.

This Note shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

BANC ONE EQUIPMENT FINANCE, INC.

By: \_\_\_\_\_

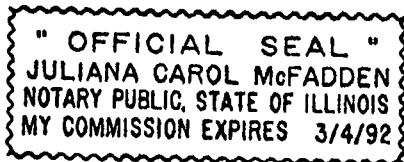
Title: \_\_\_\_\_

State of Illinois )  
County of Cook ) SS.

BEFORE ME, the undersigned notary, on this day personally appeared Paul J. Stewart, to me personally known who, being by me duly sworn, says that he/she is a Account Officer of Banc One Equipment Finance, Inc., an Indiana corporation ("Banc One"), that the above Limited Recourse Loan and Security Agreement was signed on behalf of Banc One by authority of the Board of Directors of Banc One and he/she acknowledged that the execution of the foregoing Memorandum of Assignment of Lease was the free act and deed of Banc One.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 15 day of July, 1988.

[SEAL]



Juliana Carol McFadden  
NOTARY PUBLIC

My Commission Expires:

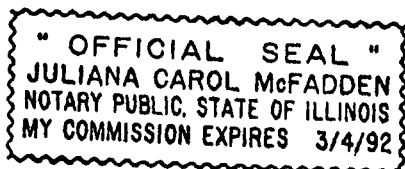
March 4, 1992

State of Illinois )  
County of Cook ) SS.

BEFORE ME, the undersigned notary, on this day personally appeared Anthony J. Halpern, to me personally known who, being by me duly sworn, says that he/she is a Vice President of The CIT Group/Equipment Financing, Inc., a New York corporation ("CIT"), that the above Limited Recourse Loan and Security Agreement was signed on behalf of CIT by authority of the Board of Directors of CIT and he/she acknowledged that the execution of the foregoing Memorandum of Assignment of Lease was the free act and deed of CIT.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 15 day of July, 1988.

[SEAL]



Juliana Carol McFadden  
NOTARY PUBLIC

My Commission Expires:

March 4, 1992